

REMARKS

Applicant acknowledges receipt of an Advisory Action dated March 19, 2004. In this Preliminary Amendment, Applicant has made a minor amendment to claim 18 and have added claim 43. Following entry of this amendment, claims 1, 3-10, 12-14, 16-22, 25-29 and 33-43 are pending in the application.

Reconsideration of the present application is respectfully requested in view of the foregoing Amendments and the remarks set forth below as well as those set forth in Applicant's Reply Filed Under 37 C.F.R. §1.116 on March 9, 2004, which are incorporated here as well.

Response to Comments Set Forth in Advisory Action

In the Advisory Action, the PTO has stated that "the comparison with the prior art is not in affidavit form and is, therefore, merely the argument of counsel." Applicant submits, however, that Applicant's Reply Under 37 C.F.R. §1.116 filed on March 9, 2004 includes arguments based upon sound scientific reasoning and are not based strictly on experimental data or the like. Indeed, Applicant is simply responding to the technical reasoning asserted by the Examiner as to what product results from the process in WO 93/04013. The PTO cannot simply discount those arguments solely because they were advanced by counsel. Accordingly, Applicant respectfully requests that the PTO reconsider the arguments set forth in the Reply filed on March 9, 2004.

Newly Added Claim

In this response, Applicant has added claim 43 which is directed to a biomember produced by the method of claim 36. Full consideration of product-by-process claim 43 in the PTO's next communication is respectfully requested.

Applicant notes that the process of claim 36 includes the step of sintering the dried body at a temperature of about 1100 °C. Applicant submits that the product of claim 43 is different from the product disclosed in WO93/04013 because the product of WO93/04013 is sintered at temperatures of 1300 °C or more. As is known in the art, hydroxyapatite resolves

into α -TCP or calcia at temperatures of 1300 °C or more. Accordingly, Applicant submits that WO93/4013 is not an appropriate base reference upon which to rely in order to establish a case of *prima facie* obviousness because changing the sintering temperature of WO 93/04013 would fundamentally change the characteristics of the product disclosed therein that results from the disclosed process.

CONCLUSION

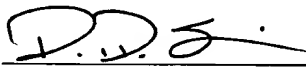
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 4/9/04

By 

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